Inherent.Com v. Martindale-Hubbell et al Doc. 15 Att. 1

EXHIBIT A

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July 13, 2005

Richard Jacobs
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LexisNexis
9443 Springboro Pike
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Re: Inherent/LexisNexis

Dear Mr. Jacobs:

This will confirm our telephone conference call on 7/12/05. The following is a chronology of events;

LexisNexis Martindale-Hubbell ("MH") was approached by Debra Kamys of Inherent.Com, Inc. ("ICI") in late July 2004 to re-start discussions about an acquisition. This was prompted by the public announcement that HubbardOne, a competitor of ICI's, was acquired by FindLaw (West), a competitor of LexisNexis Martindale-Hubbell's.

In early September 2004, MH requested a phone conference with ICI to discuss ICI's products and services and how to integrate the two businesses. On 10/25/04 (after performing an internal investigation), Tim Corcoran (VP, Large Law) of MH informed ICI that MH had a "green light" to proceed with a partnership or an outright acquisition of ICI. A team of four from MH traveled to Portland, OR for in-person meetings with ICI personnel on November 1-2, 2004. Proposed workflows were discussed and ICI shared detailed information about its products and services. On 11/19/04, Carlton Dyce (Sr. Director, Customer Experience) informed ICI that MH had decided to "lead with an acquisition model and fall back on a partnership model." Delays ensued until John Roney (VP, IT) informed ICI that LexisNexis's acquisition of Interface Software was finalized; MH was now free to focus on the acquisition of ICI. On 1/5/05, John R. sent an e-mail to ICI identifying MH's desire to "kick things into high gear" with the acquisition.

On 2/4/05, John R. sent Debra an e-mail identifying the reasons MH was pursuing the acquisition. Another trip to Portland was planned for late February, and MH requested additional information and documents. On 2/15/05, Debra provided John R. with top-level financials from ICI for 2003 and 2004. On 2/16/05, a more detailed breakdown of 2003 and 2004 financials was provided to Michael Little (Director, Program Manager). John R. identified a need to re-work internal models as he'd believed ICI had performed better financially in 2004, but responded with "I agree that we should focus on the forward track" when Debra pointed out "I believe our main focus for this potential acquisition ought to be on what we're expected to do together rather than on what we have done on our own in the past." More discussions were had wherein all agreed that ICI would perform well when utilizing MH's sales force for its products and services.

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Carlton D. and Michael L. returned to Portland for in-person meetings on 2/22 – 2/23/05. During those meetings, ICI provided detailed financial information covering the past 7 years as well as projections for the next 5 years. The *Dynapsis* product was reviewed in detail, with ICI's software development staff sharing back-end coding practices as well as the customer experience with the product.

On 3/24/05, John R. and Debra spoke via telephone; during this call, John R. shared MH's decision to NOT acquire ICI in its entirety. The focus changed to an asset purchase, and at this time all were focused solely on MH purchasing the right to use ICI's *Dynapsis* product. John R. shared that he believed the code was worth $400,000 to $700,000 to MH. During this call, a plan was made for Debra to fly to Phoenix during the LMA Conference in order to meet with Paul Gazzolo (COO) to discuss the asset purchase and to provide a demonstration of *Dynapsis*.

On 4/7/05, Debra presented *Dynapsis* to Paul G. Also present were Michael L. and Aaron Usiskin (Director, Client Development). During this meeting, all parties agreed that a revised model of MH acquiring ICI's code and clients would be adopted, and that MH would expect ICI to cease selling to the legal industry when all was complete with the sale. Discussions were held and expectations were set that MH would directly hire certain ICI employees after the sale, and that those employees would become part of the MH team in New Jersey or remotely.

On 4/29/05, Debra and Paul G. spoke via telephone; during this call, Paul G. shared that MH's Business Development team had "green-lighted" the deal but that John Lawler (CEO) wanted to meet Debra and see the *Dynapsis* presentation before providing final sign-off on the acquisition. During this call, Paul G. told Debra "You should definitely feel good about this." A plan was made for Debra to travel to New Jersey in late May 2005.

The visit to NJ included two *Dynapsis* presentations (one to several people, including some from the LexisNexis team in Dayton, OH, and another to John L. and approximately 8 others in the Executive Boardroom), and also included several meetings with others at MH to discuss implementation plans as well as operating plans post-acquisition. Debra shared her presentation suggesting a new Technical Product Division at MH with Aaron U., Carlton D. and Chris Whitmore (Market Planning). At the 5/25/05 off-site dinner meeting with approximately 10 members of the MH team, Paul G. presented Debra with MH's official Letter of Intent to acquire ICI's assets. The overwhelming attitude was celebratory, with congratulations and drinks shared all around.

On 5/26/05, a meeting with Debra, Paul G. and Michael L. was held in Paul G.'s office, with John E. and Richard Jacobs (LexisNexis attorney) attending via phone. At this time, the Letter of Intent was discussed in-depth and the amount offered for purchase was $375,000. Debra shared that ICI was expecting an offer in the range of $1.2 million and all agreed that MH would need to change the offer amount. In a one-on-one meeting with Paul G., a verbal commitment was made to Debra regarding direct employment with MH for herself post-acquisition. Employment for other ICI employees was discussed, but no commitments were made at this time.

Debra returned to Portland with the MH Letter of Intent and met with ICI's Board of Directors. A conference call was held on 6/2/05 with ICI's Board of Directors and Paul G., John E. and Richard J. from the LexisNexis/MH team. During the call, MH revised its offer amount for asset purchase to $780,000, with an expectation that this figure would be reduced by $80,000 due to ICI liabilities. The liabilities were defined as projects for which money had already been collected yet services have not yet been completely provided. As an example, a law firm who paid for one year of hosting in January 2005 would have a liability of 6 months' worth of hosting fees if MH assumed the contract in July 2005.

On 6/8/05, Debra sent John E. the full detail of ICI's 2004 financials, as well as the list of expected client liabilities with a July 2005 acquisition. The liability amount was identified to be approximately $60,000. Also sent were financials specific to the Outside Web Link ("O.W.L.") product used by Gibney, Anthony & Flaherty, which was projected to be packaged and sold to other immigration law firms.

On 6/9/05, Paul G. sent Debra a revised Letter of Intent containing edits from the 6/2/05 conference call. The amount for purchase was identified to be $780,000 with a reduction of approximately $80,000 for the liabilities as described above. ICI's Board of Directors made edits to the Letter of Intent, then signed and faxed it to Paul G. on 6/15/05. On 6/16/05, MH identified a need for a majority percentage of shareholders' signatures on the Letter of Intent and stated that the contract would be final and accepted by MH upon a majority of shareholders to sign. On 6/17/05, ICI obtained a signature from its 36% shareholder, which (when added to the signatures from the Board members) constituted the majority required. Paul G. stated "we have a deal" and therefore MH agreed to an immediate site visit.

During the visit after the agreement was finalized to purchase the assets of ICI by MH, ICI provided the MH team with three binders of information in response to their list requesting production of documents. Extremely sensitive information was shared, including corporate documents, company financials, client contact lists and employee salaries. Furthermore, detailed descriptions of products and services sold by ICI were shared, with MH having the opportunity to review code and coding practices in-depth while on-site. MH was also given two binders containing copies of every legal client's contract(s) with ICI; MH was very insistent on getting the copies of all contracts while on-site, even though the time to make copies placed a burden on ICI's staff. The burden was explained but MH was adamant that obtaining copies of all contracts was necessary. Each contract contains detailed information including client names and contact information, as well as pricing and contract expiration dates.

MH also conducted intense interviews with ICI's Network Operations staff, obtaining detailed descriptions of how ICI sets up and manages its network facility. One member of the MH team, Anthony Rodig, acted in a manner described by ICI staff as "arrogant and rude". In response to discussions with Anthony R., one member of ICI's staff resigned on 6/24/05 (Mark Holm). Mark H. explained that Anthony R. made it clear to him that he was not going to be needed once the asset purchase was completed and the transition began, so he resigned to protect himself. This left ICI in a precarious situation, as running the Network Operations Center is a two-person job and the remaining individual has identified his intent to resign soon if he doesn't get support. On 7/8/05, another ICI employee resigned (Kary Boothroyd). On 6/28/05 MH stated it would not go forward with the deal even after they had agreed and entered into a contract to purchase ICI's assets. This constitutes breach of contract!!

It is also important to note that the Letter of Intent, originally received from MH on 5/25/05, included a requirement that ICI not sell any products or services to "lawyers, law firms or bar associations or others acting on behalf of those types of customers" for the duration of the Due Diligence period. MH unilaterally terminated the contract on 6/28/05, so ICI was put in a position of having very low sales allowed for nearly five weeks. This has been extremely damaging to the business of ICI, as it is now very behind in collecting monies from its clients.

Furthermore, it is ICI's position that MH terminated the contract without merit and without interest in allowing ICI to remedy any concerns or problems. MH cited the reason that "the diligence work revealed to us facts and conditions that were not consistent with preliminary information provided to us before the diligence visit and our assumptions based upon that preliminary information." Phone calls identified three main areas of concern:

1. Too many versions of ColdFusion code running on ICI's servers;
2. Too many versions of Dynapsis code; and
3. Financial concerns

ICI's responses:

1. On 11/2/04, during MH's on-site visit with Michael L., Carlton D. and Peter P., MH asked for a breakdown of ICI's technologies. ICI shared with MH that it was currently using ColdFusion 4.5, ColdFusion 4.5.1, ColdFusion 5 and ColdFusion MX. Furthermore, on 5/17/05, Debra provided a document to Michael L. with a full breakdown of all server configurations. This document revealed that ICI runs ColdFusion 4.5.1, ColdFusion 5 and ColdFusion MX, which IS consistent with what MH learned during the Due Diligence visit.
2. Similarly, discussions with Debra and members of ICI's Software Development staff during the 11/2/04 on-site visit with Michael L., Carlton D. and Peter P. revealed that ICI does indeed have many versions of its Dynapsis code. Reference this question from MH, followed by ICI's response:

   Frequency of changes to the core code base?
   => The code base encounters fundamental changes about every six months. This includes integration of new, third party tools and also the addition/modifications of the server modules.
3. ICI's financial situation should not have played a role in MH's decision, because the transaction focused solely on MH's purchase of ICI's assets. In discussions with John E. via phone and during the on-site Due Diligence meetings in mid-June 2005, Debra shared that ICI was in open discussions with all creditors and that all creditors were willing to wait for payment until the first payment from MH was received (expected in late July 2005). Some creditors were willing to wait until the second payment was received in the fall of 2005 to receive full payment. Also of note is that ICI shared its 2004 financials with Michael L. and Carlton D. during their visit in February 2005.

Furthermore, both Debra and Charlie Van Rossen (ex-Chairman, ICI Board of Directors) asked Paul G. if there were any steps ICI could take to alleviate MH's concerns. Both were met with a resolute attitude that made it clear that MH had no intentions of working with ICI to remedy the alleged problems.

Overall, MH has irreparably damaged ICI by MH's breach of contract. Financial models were reviewed and approved by MH at several points throughout the process, and ICI was repeatedly given positive feedback. Furthermore, there were several occasions when MH identified its desire to move things forward quickly, yet delays occurred nearly every step of the way. ICI has had two key employees resign, along with its Chairman of the Board, due to circumstances related to the MH situation. Additionally, being asked to NOT sell to the legal industry for a period of five weeks has left ICI in a financially harmed position. ICI also feels at risk for future competition if it is able to continue its business model... ICI understands that MH still desires to have the products and services at issue in its own arsenal for sales; giving MH's team an intense look inside ICI's operation provided an unfair advantage that leaves ICI exposed. The bottom line is that MH breached the contract and allowed no attempts for ICI to remedy alleged problems, leaving ICI greatly harmed. ICI will not stand for this.

Unless a settlement is reached within five (5) days, a lawsuit will be filed. You brought to my attention the fact that you will be out of town soon.; regardless of your status, we must have a response no later than 7/18/05.

Very truly yours,

LAW OFFICES OF PATRICK E. CATALANO

By:________________________
Patrick E. Catalano, Esq.

cc: Clients

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